

### **REMARKS/ARGUMENTS**

Claims 83, 88-96 and 98-105 were pending in this application prior to this communication. Claims 1-82, 84-87 and 97 have been previously canceled. Claims 99-104 are cancelled herein. Claims 83, 88-96, 98 and 105 are currently pending.

This Response After Final is hereby filed with a Notice of Appeal.

By the amendments, Applicants do not acquiesce to the propriety of any of the Office's rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

#### **1. 35 U.S.C. §102 Rejections**

**a. Claims 83, 89, 90, 91 and-92 have been rejected under 35 USC §102(e) as being allegedly anticipated by Cox et al. (US 2003/0023301) ("Cox")**

In Applicants independent claim 83, it is recited *inter alia* that the third lattice structure is substantially similar to the second lattice structure. In the Final Office Action (hereinafter "OA"), section 2, the Office refers to figure 7 of Cox. More specifically, the Office in an attempt to read Cox on independent claim 83, identifies first end portion 23B of Cox, second end portion 23A and central portion 23C. The Examiner labels such structures in Cox in a manner to read on corresponding elements in Applicants claim 83. Doing so, however, creates conflict within the body of the Office's rejection.

More specifically, the Office states that the third lattice structure corresponding to the central portion is substantially similar to the second lattice structure corresponding to the second end portion. This is simply not the case in Cox. Clearly the third lattice structure corresponding to central portion 23C of Cox, as identified by the Office, is not substantially similar to the second lattice structure corresponding to second portion 23A of Cox as identified by the Office. Quite the opposite. In Cox central portion 23C has a lattice structure that is similar to the first end portion 23B of Cox as identified by the Office.

Accordingly, the Office's identification of elements in Cox in an attempt to read upon corresponding elements in Applicant's independent claim 83, necessarily leads to the above discussed element in claim 83 as not being met by Cox. Applicants respectfully submit that independent claim 83 is therefore not anticipated by Cox. Claims 89-92 depending from claim 83, are therefore also not anticipated by Cox. Therefore, Applicants respectfully request reconsideration and withdrawal of this ground for rejection as to Claim 83 and all claims that depend therefrom and otherwise subject to this ground for rejection.

**b. Claims 83 and 89-92 have been rejected under 35 USC §102(e) as being allegedly anticipated by Penn et al. (US 6,375,677) ("Penn")**

As with the discussion regarding Cox above, the Office also indicates that Penn has a third lattice structure that is substantially similar to a second lattice structure. The Office refers the reader to a figure on page 6 of the OA. In that figure, the Office identifies a first end, a central portion and a second end. It does not appear that the central lattice and the second lattice are substantially similar. Moreover, Applicants can find no support in the written description of Penn to substantiate the Office's assertion.

In addition to the above shortcoming of the Penn description, the Office also states that the first amplitude between adjacent first end crowns is greater than a second amplitude between adjacent second crowns. In the figures provided by the Office on page 6 of the OA, it becomes clear that in identifying "second end crowns" and "first end crowns," which the Office had to do to meet previously recited elements of the claim, that the amplitude of the element identified as the first end crowns is not greater than the amplitude identified by the second end crowns. It is in fact contrary. More specifically, the amplitude defined by the circumferentially undulating pattern of the "second end crowns" pattern of the Office's figure on page 6, is clearly greater than the amplitude defined by the circumferentially undulating pattern of "first end crowns" pattern of the Office's figures.

Accordingly, the Office's identification of elements in Penn in an attempt to read upon corresponding elements in Applicant's independent claim 83, necessarily leads to

the above discussed element in claim 83 as not being met by Penn. Applicants respectfully submit that independent claim 83 is therefore not anticipated by Penn. Claims 89-92 depending from claim 83, are therefore also not anticipated by Penn. Therefore, Applicants respectfully request reconsideration and withdrawal of this ground for rejection as to Claim 83 and all claims that depend therefrom and otherwise subject to this ground for rejection.

**c. Claim 105 has been rejected under 35 USC §102(b) as being allegedly anticipated by Limon (US 6,273,910).**

To begin, it is noted that in section 4 of the OA regarding analysis of the Limon patent that the Office identifies an element "15" in Limon. Applicants can find no element referenced with numeral 15 in Limon. It is assumed that the Office was referring to element 12 of Limon.

Claim 105 specifically recites that the initial condition of the stent, i.e., the condition in which the stent is initially formed, has an initial diameter. And that that initial diameter is closer to an expanded diameter than it is to a collapsed diameter, i.e., that diameter when the stent is radially collapsed onto the delivery system. Implying that this recited element of Applicants claim is met, the Office refers the reader to column 8, line 54 through column 9, line 5 of Limon. Applicants cannot disagree more with this assertion.

Stents, like Limon, are typically cut or fashioned in some manner from a hollow tube. The tube, and therefore the resulting stent fashioned there from, typically has a diameter that is much closer to the crimped or collapsed diameter than to a final expanded diameter. Furthermore, prior art stents like Limon have a nominal or minimum expanded diameter. The initial diameter is typically more closely related to the diameter of the crimped configuration than it is to the nominal diameter. Nothing in Limon dispels or suggests otherwise.

Owing to the nature of certain of Applicants disclosed novel embodiments, Applicants have disclosed and claimed a stent that is fashioned from a tube sized more closely to a final expanded diameter of the stent. This aspect of claim 105 is not

disclosed or suggested in Limon. The section of Limon that the Office refers to, simply states the obvious i.e., that the stent can be expanded to a point to accommodate the arterial stenosis. Of course, this can only be done up to the limitations of the delivery system itself. Clearly, nothing in this section of Limon states or even implies that the initial diameter of the stent is closer to the expanded or even nominal expanded diameter of the stent as opposed to the collapsed or crimped diameter.

Accordingly, Limon does not disclose every element of Applicants claim 105. Therefore, Applicants respectfully submit that independent claim 105 is not anticipated by Limon. Applicants respectfully request that this ground for rejecting claim 105 please be reconsidered and withdrawn.

**2. 35 U.S.C. §103 Rejections**

**a. Claim 93 has been rejected under 35 USC §103(a) as being allegedly unpatentable over Cox in view of Santos et al. (US 7,169,178) ("Santos")**

Claim 93 is dependent on claim 83. As stated *supra*, Cox does not meet the limitations of independent claim 83. Santos is applied solely as a teaching reference to extend Cox to meet limitations of dependent claim 93. Cox itself fails to teach all limitations of claim 83. Therefore, the combination of Cox and Santos does not cure this deficiency. Accordingly, Applicants respectfully request reconsideration and withdrawal of this ground for rejecting claim 93.

**b. Claim 93 has been rejected under 35 USC §103(a) as being allegedly unpatentable over Penn in view of Santos**

Claim 93 is dependent on claim 83. As stated *supra*, Penn does not meet the limitations of independent claim 83. Santos is applied solely as a teaching reference to extend Penn to meet limitations of dependent claim 93. Penn itself fails to teach all limitations of claim 83. Therefore, the combination of Penn and Santos does not cure this deficiency. Accordingly, Applicants respectfully request reconsideration and withdrawal of this ground for rejecting claim 93.

**c. Claims 94, 95 and 98 have been rejected under 35 USC §103(a) as being allegedly unpatentable over Cox in view of Brightbill (US 7,083,822)**

At the outset Applicants must note that this rejection is confusing and, therefore, does not allow Applicants to fully and cogently respond thereto. More specifically, the Office states that these claims are rejected as unpatentable over Cox in view of Brightbill. Towards the end of this discussion in section 8 of the OA however, the Office introduces a reference to Marin. As far as Applicants can determine, Marin has yet to be cited by either the Office or Applicants during the prosecution of the application including the instant OA. As a consequence, Applicants' respectfully request that the Office withdraw the finality of this OA, clarify this OA and resend same to Applicants such that Applicants have an opportunity to appropriately address the OA.

However, in an effort to present a complete response, the following arguments are presented. Cox is the primary reference forming the basis for this particular rejection. In discussing Cox, the Office here identifies 23B as the first end portion having a first lattice structure. 23A is identified as the second lattice structure with 23C identified as the third lattice structure along a corresponding central portion. Applicants independent claim 94 however, specifically recites that the first lattice structure is different than both the second and the third lattice structure. In Cox, first lattice structure 23B may have a different lattice structure than 23A but lattice structure 23C is clearly similar to lattice structure 23B and dissimilar to lattice structure 23A. Therefore, the primary reference to Cox is lacking in its ability to read on certain elements of Applicants claim.

Brightbill does not cure the above structural deficiency of Cox. Brightbill is concerned with uniform drug delivery and does not teach or suggest the novel lattice structure of Applicants claim. In fact, Brightbill discloses a stent or stents with a uniform and consistent lattice structures. Therefore, Brightbill necessarily cannot motivate one to modify Cox' lattice structure to meet claim 94. Furthermore, nothing in Brightbill would suggest taking the non-uniform lattice structures of Cox and creating an

assembly of overlapping stents wherein the novel and claimed first lattice structures of Applicants claim 94 are overlapped.

Accordingly, Applicants respectfully request reconsideration and withdrawal of this ground for rejecting claim 94 and all claims that depend therefrom.

**3. Conclusion**

Applicants believe in good faith that each and every ground for rejection has been adequately addressed and traversed in view of the present arguments, and respectfully requests that all present grounds for rejection be reconsidered and withdrawn and that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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